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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re JAMAUL M., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. JAMAUL M., Defendant and Appellant.	A154577 (Contra Costa County Super. Ct. No. J17-00424)

Appellant Jamaul M. was found to have committed murder and attempted murder, crimes he committed at the age of 13. He was committed to the Division of Juvenile Justice (DJJ). Appellant makes four arguments on appeal: (1) the police department's failure to preserve the original of a photo lineup denied him due process; (2) the juvenile court abused its discretion when it committed him to DJJ; (3) the juvenile court did not properly determine his custody credits; and (4) five probation conditions must be stricken because the juvenile court "did not impose them."

We reject appellant's first two arguments, and thus affirm the jurisdictional determination and the commitment. The Attorney General concedes appellant's last two arguments, and thus we remand for the limited purpose of determining the appropriate custody credits and striking the five probation conditions.

BACKGROUND

The Facts

The victims were Jibril Abubakar, who was killed, and Dylan Williams, who was shot in the back, but survived. These are the facts concerning those crimes.

On the evening of March 23, 2017, Williams was with his friend Abubakar when a call came on Abubakar's phone. Abubakar answered it, and Williams heard a male voice on the other end. After he hung up, Abubakar told Williams he was going to sell a half-ounce of marijuana for $80, to someone he had met that day.

Williams drove Abubakar to the Delta Pines apartment complex in Antioch, where they arrived just after 9:20 p.m. Williams pulled up next to two people, one of whom he recognized: Derrick Walker, whose hair he had had cut. The other person was appellant, who was wearing a black hoodie and a "True Religion" brand beanie. Appellant came up to the car and said, "Show me the weed" and Abubakar handed it to him. Appellant then said "get out of here," pulled a gun from his waist and fired multiple shots at Williams and Abubakar.

Douglas Melendez, a neighbor, was in his car in the Delta Pines parking lot with his headlights on. He heard five or six gunshots, and then saw three people run. One was short and heavy-set, wearing a dark hoodie, and he appeared to be trying to tuck something that looked like a gun into the waist of his pants with his left hand. Appellant is left handed.

Williams, who had been shot in the back, drove away, and stopped at a 7-11 store where he saw a police officer and signaled to him. Abubakar was already dead. Williams went to the hospital for treatment, but the bullet remained in his back at the time of the hearing (some 12 months later), and Williams felt pain every night.

The police recovered 12 nine-millimeter shell casings from in front of the Delta Pines apartment complex, which an expert concluded had all been fired from the same firearm. The expert also determined a Ruger P85 nine-millimeter gun had been the firearm used for those 12 shots–a firearm, it would develop, similar in appearance to the

one appellant was holding in a picture on his girlfriend's phone. The black Honda Williams had been driving had six bullet holes.

Walker, who was given immunity, testified that on the evening of March 23, he had been at a family gathering at the Delta Pines apartment complex. He left around 9:20 p.m. and while walking out to the street to get a ride, ran into appellant, whom he had seen at the gathering but did not know. Appellant said to Walker, "Somebody is going to pull up with some weed." As Walker stood waiting for his ride, he saw a black car down the block, and heard appellant make a call and say, "I'm down here, bro. Turn around." The black car turned around and pulled up at the curb in front of Walker Someone inside the car said to Walker, "Hey, what's up bro?" It was dark, and Walker could not see inside the car, and he ignored the comment. Then, according to Walker, appellant asked someone in the car, "Is this some real cookies, bro?", then "whipped out a gun" and fired repeatedly at the car. Walker recalls "[a]bout 13 or more" shots. Walker ran away, and the black car drove off.

On March 30, Walker spoke with detectives and viewed a photo lineup. He identified Jamaul as the shooter in the lineup And changing a story he earlier told, Walker eventually admitted that he was standing close to Jamaul, that he had seen him around Delta Pines, and that the police should look for "a black–he's mixed . . . fat kid," who was 13 or 14 years old, with a ponytail, named Jamaul, who was "from the low," although Walker claimed he never saw him there.[1]

Appellant was arrested on March 31, at which time he was wearing a True Religion beanie. That day he was interviewed by Antioch Police Department Detective Jason Vanderpool, the primary investigator on Abubakar's homicide, which interview was recorded and played for the juvenile court. At one point appellant and his mother were alone in the interview room, and appellant said, " 'But Mom, just tell Tiana to say

[1] Walker acknowledged that when he spoke with the police a few days after the shooting, he had not been truthful. Walker had not wanted to be known as "a snitch or whatever" because snitches get killed. Eventually, however, Walker told the police the truth, and he identified appellant as the shooter in a lineup.

she don't know nothing. If they say [] about my voice, tell Tiana to say I don't think that's his voice [].' "

Tiana S., who was also interviewed by Detective Vanderpool on March 31, which interview was also recorded. Tiana said she was 14 years old, had been appellant's girlfriend for two years, and appellant used her phone. She recalled hearing that someone had been killed at Delta Pines about a week earlier. She said appellant had said "he made bad choices and then he said, um, something happened at Delta Pines or something like that. . . . [S]omebody pulled up or something and then he just started crying after that. . . . [H]e was just up all night crying . . . . [A]nd like punching the walls and stuff. Saying I'm tired of being here." Tiana also confirmed that appellant had a True Religion beanie.

Detective Vanderpool played Tiana a voicemail recovered from Abubakar's cell phone, which voicemail had come from a number identified as "Tiana" Tiana identified appellant's voice saying, "Call me back, bro. Call me back. Call me back. I need like two quarters right now. I'm trying to put some money in your pocket, bro. Call me back."[2] The last contact between Tiana's and Abubakar's phones had been a call from the former to the latter at 9:22 p.m. on March 23.

An expert extricated data from Tiana's cellphone that confirmed Tiana's statement appellant used her phone, revealing it had been used to make a significant number of calls, and send a significant number of text messages, including to appellant's mother, and also a contact listed as "Jamaul Dad." Some messages sent to the phone were directed to appellant, and some sent from the phone identified him as the sender. There

[2] Tiana would testify at the hearing that she was unable to recognize appellant's voice on the voicemail. She also said that appellant's reference to "bad choices" had been in reference to his having dropped out of football and school. At the conclusion of her testimony, the juvenile court observed, "For the record, this is probably the most hostile disrespectful witness I've had in a long time . . . ." Ultimately the juvenile court found Tiana "not credible at all on the stand," although "what she said to the police before she was being texted by the minor and his mother was fairly credible and certainly corroborative."

were also 124 photos of appellant on the phone, as well as a video of what appeared to be him holding a gun similar to that used in the shooting.

The cell phone data also revealed that the day after the shootings Tiana's phone was used for internet searches about "a murder—or a man being shot in Antioch," searches that had later been deleted. The data also showed that while in juvenile hall appellant called his mother to confirm that she had told Tiana what he had asked his mother to do—to tell Tiana "to say she didn't know nothing." And sometime later he called Tiana and said, "I need you to vouch for me and let them know that I didn't have your phone."

While in custody, appellant wrote a letter to Tiana (but addressed to someone else), that said: " 'When you write me always send it in my name. Im [*sic*] jus sendin [*sic*] this in somebody else name cus the shit in this letter.' " And appellant also wrote: " ' Not sayin you snitched but I aint gone lie you [indecipherable] snitched. I told you to say you don't know nun but you aint listen. ' "

The Proceedings Below

On April 4, 2017, the Contra Costa County District Attorney filed a juvenile wardship petition (Welf. & Inst. Code, § 602, subd. (1)) alleging two counts: (1) count one, murder (Pen. Code, § 187, subd. (a); and (2) count two, attempted murder (Pen. Code, §§ 187, subd. (a), 664. As to each count, the petition alleged that appellant had personally discharged a firearm causing great bodily injury or death (Pen. Code, §12022.53, subd. (d)).[3]

On March 5, 2018, the juvenile court sustained the petition in its entirety.

On June 4, following a contested dispositional hearing, the juvenile court committed appellant to the DJJ with a maximum confinement term of 10 years.[4]

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[3] As to count two, attempted murder, the petition originally alleged violation of Penal Code section 12022.53, subdivision (d). On March 5, 2018, the juvenile court granted the prosecutor's request to modify the allegation.

[4] As of July 1, 2005, the correctional agency formerly known as the Department of Youth Authority (or California Youth Authority) became known as the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF). DJF is part of the

DISCUSSION

Failure to Preserve the Photo Lineup Viewed by Williams did not Deprive Appellant of Due Process.

Introduction to the Issue

As indicated above, Walker's testimony included that he identified appellant in a photo lineup. Williams was also shown a lineup, the original of which Detective Vanderpool lost, which led to appellant's motion in limine to exclude William's identification of appellant due to the lost lineup. Appellant argued that the police report said that Williams "stated that the individuals in positions one and two looked familiar," while appellant was in position three; and that slightly later, Williams identified appellant in position No. 3. Appellant argued that the lineup was "exculpatory as Mr. Williams pointed out two other people he believed shot him," and further that the lineup sheet "memorializes what happens at the photo lineup."

The prosecutor responded that although the lineup shown to Williams had been lost, a copy of the lineup, with the same photographs in the same position, had been provided to appellant.

Commenting that, "I think it comes to a credibility issue more than anything," the juvenile court denied appellant's motion.

At the jurisdictional hearing, Detective Vanderpool testified that he "somehow lost" the copy of the lineup. However, he testified, he had a clear memory of the lineup procedure with Williams, which included that he showed Williams the same photo lineup

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Division of Juvenile Justice (DJJ), (Gov. Code, §§ 12838, subd. (a), 12838.5; Pen. Code, § 6001; Welf. & Inst. Code, § 1710, subd. (a)), and statutes that formerly referred to the Department of the Youth Authority now refer to DJF. (See *In re Jose T.* (2010) 191 Cal.App.4th 1142, 1145, fn. 1.)

Despite that, many juvenile courts, many attorneys, some legal opinions, and some of the Rules of Court refer to DJF as DJJ. (See, e.g., *In re D.J.* (2010) 185 Cal.App.4th 278; Cal. Rules of Court, rule 5.805.) So, too, does appellant here, as did the juvenile court and the attorneys below. For consistency, we will use DJJ.

he had shown Walker, which had appellant in the number three location, and read Williams the admonishment about how to view the lineup. Williams said he understood, and stated that the persons in the Number 1 and Number 2 spot "looked familiar." At that point, Vanderpool asked if Williams wanted to look at some of the clothes that the police had collected. Williams asked, "Can I look at [the lineup] one more time?" And then he said, " 'I'm pretty sure number three is the person who shot me.' " Detective Vanderpool then had Williams circle and initial appellant's picture in the Number 3 spot.

Williams testified that the police showed him a photo lineup,[5] and he told them "the individual in 'No. 1' looked familiar." Then he went to look at some clothes with the officer, where he asked to see the lineup again. And again, he identified the person in "No. 1." Williams testified that he had signed a form about the lineup procedure, but had never marked an actual photo lineup. And he denied that he had a "clear and distinct memory" of the lineup procedure. All that said, Williams remembered the shooter's face, and at the hearing identified appellant as the shooter.

Appellant contends that the failure to preserve the lineup violated his right to due process, asserting that "if one believes Williams, the evidence was potentially exculpatory" because Williams testified that he did not identify appellant in the lineup and did not mark the lineup sheet. Thus, if the lost lineup confirmed that testimony, then "it would undermine his in[-]court identification of [appellant] to Vanderpool, and did not mark the photo lineup."

The Law

Witkin distills the applicable law this way: "The prosecution may have a duty to preserve exculpatory evidence. This duty is limited to evidence that (1) possesses an exculpatory value that was apparent before the evidence was destroyed and (2) is of such a nature that the defendant would be unable to obtain comparable evidence by other

[5] Williams acknowledged that the lineup he was shown was similar to Minor's Exhibit A, which had been shown to, and marked by, Walker. Minor's Exhibit A and People's Exhibit 29, identified by Detective Vanderpool as the lineup he used with Williams, featured the same six photographs in the same locations.

reasonably available means. (*California v. Trombetta* (1984) 467 U.S. 479; *People v. Cooper* (1991) 53 Cal.3d 771, 810.) Moreover, the evidence must have been destroyed in bad faith. (*Arizona v. Youngblood* (1988) 488 U.S. 51, 109 [(*Youngblood*)]; *People v. Memro* (1995) 11 Cal.4th 786, 831." (5 Witkin, Cal. Crim. Law (4th ed 2012) Criminal Trial, § 659, p. 1017.)

Our Supreme Court addressed the issue in *People v. Duff* (2014) 58 Cal.4th 527 (*Duff*), where the issue involved the disposal of the car in which the victims were shot. The court found no due process violation, because no bad faith was shown. This was the relevant discussion:

" 'Due process does not impose upon law enforcement "an undifferentiated and absolute duty to retain and to preserve all material that might be of conceivable evidentiary significance in a particular prosecution." ' " (*Duff, supra,* 58 Cal.4th at p. 549.) "At most, the state's obligation to preserve evidence extends to 'evidence that might be expected to play a significant role in the suspect's defense.' " (*Ibid.,* quoting *California v. Trombetta, supra,* 467 U.S. at p. 488; *People v. Montes* (2014) 58 Cal.4th 809, 837.) "If the evidence's exculpatory value is apparent and no comparable evidence is reasonably available, due process precludes the state from destroying it." (*Duff, supra,* 58 Cal.4th at p. 549.) "If, however, 'no more can be said [of the evidence] than that it *could have* been subjected to tests, the results of which *might have* exonerated the defendant' ([*Youngblood,* at p. 57], italics added), the proscriptions of the federal Constitution are narrower, 'unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law [citations.]' " (*Duff, supra,* 58 Cal.4th at p. 549.)

Based on that, the Supreme Court held that Duff's claim of error fails because he cannot demonstrate the bad faith required by *Arizona v. Youngblood*. (*Youngblood,* at p. 55.) Likewise here, for several reasons.

To begin with, the lineup sheet had no apparent exculpatory value prior to its destruction, the evidence at the time of the hearing showing that the lineup *inculpated* appellant by reflecting Williams's identification of appellant as the shooter. Further, the

trial court reasonably concluded that appellant could obtain comparable evidence: the same lineup had been provided to the defense, and appellant was free to—and did—examine both Williams and Detective Vanderpool about the lineup procedure.

Appellant apparently concedes the point, because his argument asserts only that " 'if one believes' " Williams's testimony at the contested jurisdictional hearing, then the lineup was only "potentially exculpatory." [Citation.]

Second, as *Youngblood* makes clear, failure to preserve "potentially useful" evidence does not constitute a denial of due process unless appellant has shown "bad faith on the part of the police." (*Youngblood, supra,* 58 U.S. at p. 58.) Detective Vanderpool testified that the lineup had simply been lost, and a "thorough search" had not uncovered it. In the absence of any evidence that the loss of the lineup was attributable to bad faith, the juvenile court reasonably found no due process violation. (See *Youngblood, supra,* 58 U.S. at p. 58 [no bad faith, and thus no due process violation, when police conduct "can at worst be described as negligent"].)

But even if there were error, it was harmless beyond a reasonable doubt. (See *People v. Mulcrevy* (2014) 233 Cal.App.4th 127, 131.) That appellant was the shooter was overwhelmingly shown by voluminous other evidence, including: neighbor Melendez's observation of a left-handed gunman fleeing the scene; photographs and videos on Tiana S.'s cellphone showing appellant holding a firearm matching that used in the shooting; Tiana's description of appellant's sorrowful—and then violent—behavior following the shooting; and appellant's attempts to dissuade Tiana from incriminating him. And, of course, there was Williams's in-court identification of appellant as the shooter, and Walker's identification. In light of the overwhelming evidence establishing appellant as the shooter, the loss of Williams's photo lineup was harmless beyond a reasonable doubt.

The Commitment to DJJ is Supported by Substantial Evidence

Appellant's second argument is that the trial court abused its discretion when it sentenced him to DJJ. The basis of the argument is that the record does not establish that

he "was screened . . . for other placements" or that he "will benefit from a DJJ commitment." We read the record differently, and reject the contention.

The Background of the Issue

The matter came on for a contested dispositional hearing on May 2, a hearing that was lengthy, resulting in over 110 pages of reporter's transcripts. At the conclusion of that hearing, the court committed appellant to DJJ with a maximum physical confinement of 10 years. Doing so, the court noted it was very familiar with all of the resources, and found one placement not suitable since it is a short program that could not meet appellant's rehabilitation needs, and rejected another placement because it is a short program designed for people who have committed less serious crimes, and which does not have the resources to change appellant's criminal lifestyle—moreover, noting that both alternatives were not secure. In the court's view, appellant needs a lot of rehabilitation, a lot of counseling, a lot of treatment, and a lot of good behavior motivation. And the other options were too short or did not provide appellant—who was "entrenched in a criminal lifestyle"—the rehabilitation he required. And the court found, "the mental and physical conditions and qualifications of the minor are such as to render probable that he will be benefited by the reformatory, educational discipline, or other treatment provided by DJJ."

Applicable Law: The Statutory Framework

"The purpose of juvenile delinquency laws is twofold: (1) to serve the 'best interests' of the delinquent ward by providing care, treatment, and guidance to rehabilitate the ward and 'enable him or her to be a law-abiding and productive member of his or her family and the community,' and (2) to 'provide for the protection and safety of the public . . . .' " (*In re Charles G.* (2004) 115 Cal.App.4th 608, 614–615, quoting Welf. & Inst. Code, § 202, subds. (a), (b) & (d).) Welfare and Institutions Code, section 202 was amended in 1984 to shift "its emphasis from a primarily less restrictive alternative approach oriented towards the benefit of the minor to the express 'protection and safety of the public.' " (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396 (*Michael D.*); see also *In re Javier A.* (1984) 159 Cal.App.3d 913, 958.) At disposition,

the juvenile court must act consistently with these purposes. (*In re Schmidt* (2006) 143 Cal.App.4th 694, 716.)

In making its dispositional order, the court must "consider 'the broadest range of information' in determining how best to rehabilitate a minor and afford him adequate care." (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329 (*Robert H.*), quoting *In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1684.) In addition to any other relevant and material evidence, the court should also consider "(1) the age of the minor, (2) the circumstances and gravity of the offense committed by the minor, and (3) the minor's previous delinquent history." (Welf. & Inst. Code, § 725.5.)

In order to commit a minor to the DJJ, "there must be evidence in the record demonstrating both a probable benefit to the minor by a [DJJ] commitment and the inappropriateness or ineffectiveness of less restrictive alternatives." (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396; accord, *In re George M.* (1993) 14 Cal.App.4th 376, 379; *Michael D., supra,* 188 Cal.App.3d at p. 1396; see also Welf. & Inst. Code, § 734 ["No ward of the juvenile court shall be committed to the [DJJ] unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he [or she] will be benefited by the reformatory educational discipline or other treatment provided by the [DJJ]"].) While greater emphasis has been placed on "punishment for rehabilitative purposes and on a restrictive commitment as a means of protecting the public safety," commitment to the DJJ cannot be based exclusively on retribution. (*Michael D., supra,* p. 1396.)

Applicable Law: Standard of Review

We review the juvenile court's decision to commit appellant to the DJJ for abuse of discretion. (*Robert H., supra,* 96 Cal.App.4th at pp. 1329–1330; *In re Asean D.* (1993) 14 Cal.App.4th 467, 473; see also *In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 465, [" ' " 'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' " ' "].) "We must indulge all reasonable inferences to support the decision of the

juvenile court and will not disturb its findings when there is substantial evidence to support them." (*Michael D., supra,* 188 Cal.App.3d at p. 1395; accord, *Robert H., supra,* 96 Cal.App.4th at pp. 1329–1330; *In re Asean D., supra,* 14 Cal.App.4th at p. 473.) Substantial evidence is " 'evidence which is reasonable, credible, and of solid value . . . .' " (*In re Paul C.* (1990) 221 Cal.App.3d 43, 52.) In determining whether there was substantial evidence to support the commitment, we must examine the record presented at the disposition hearing in light of the purposes of the juvenile court law.

Applying those principles here leads to the conclusion that commitment to DJJ was supported by substantial evidence—plenty of it.

The evidence begins with the lengthy, 42 page report from the probation office recommending commitment to DJJ. Deputy Probation Officer Rick Waggener, the author of the report, testified about it, and how the probation department came to the recommendation it did.

Appellant, who was 13-years old at the time of the crimes, had already had several prior contacts with the criminal justice system, including four in 2016: on March 7, when he took a beverage from a gas station, which resulted in him receiving "a warning letter"; on September 14, when he was seen in possession of a loaded firearm at Delta Pines; on October 18, when he assaulted a vice principal at his school by grabbing her in a bear hug and pounding her on her back; and on November 28, when he broke the driver's side window of his mother's car with his fist. This, of course, escalated, to the crimes in March 2017.

Waggener testified about other information appellant provided, including his involvement in a street gang, leading a group within the gang called the "Choppa Boys"—a gang known "as being involved in a wide range of serious criminal activity, including several homicides, robberies, residential burglaries, possessing and shooting firearms, and carjacking." Appellant admitted using marijuana, having started before the age of 10, and at the time of the murder, was using it every day. He also admitted liking and using alcohol, and that he "enjoyed drinking cough syrup."

Asked about his home life, appellant said he had no curfew and no chores. He admitted he did not attend school regularly, and that he had "problems" with some teachers and school administrators. Indeed, his school record for the previous full year of middle school (2015–2016) showed "28 entries for significant incidents," including "disrespect towards teachers, leaving class without permission, and bullying or fighting." He was also suspended 15 times. And in the most recent (2016–2017) school year, appellant was expelled after grabbing a vice principal in a bear hug and hitting her with a fist "forcefully and repeatedly, on the back." He was referred to a different school, but only attended three days in the first three months. He then attended "fairly regularly" for a month, stopping several days before the murder.[6]

Despite the juvenile court having found that appellant murdered Abubakar, and despite all the evidence supporting that finding—including, not incidentally, the phone calls and Tiana S.'s testimony—appellant denied ever having spoken to Abubakar or arranging to buy marijuana from him.

Waggener also provided details of appellant's behavior while in custody, many of which, in appellant's own words, were for "defiant, disruptive, or disrespectful behavior." These included multiple incidents "serious enough to require an Incident Report," including multiple assaults on other residents, disrespect and threats towards staff, and possession of gang writings. On one occasion, appellant violated a court order by attempting to write a letter to Tiana using the name of another resident, which letter contained numerous references to a street gang, and also discussed appellant hitting Tiana, showing Tiana how to use a firearm, and asking Tiana to prostitute for him.

Based on all it learned, the probation department evaluated appellant as posing a "high risk" for reoffending. The evaluation said that, despite appellant's age, his crime

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[6] Waggener spoke with appellant's mother. She said appellant did have a curfew and chores. She also said she knew appellant had not been attending school, "but did not know what to do." She knew appellant had been smoking marijuana, but did not know that he had been smoking it every day or that he had been using alcohol or cough syrup. She did not know that appellant was involved in gangs. And she did not believe that appellant killed Abubakar.

was a "pre[]meditated, cold[-]blooded, totally senseless and brutal murder," for which appellant denied responsibility. Further, appellant admitted membership in an "active and dangerous" street gang. In sum, appellant's behavior reflected "defiance, . . . disrespect and violence" leading to the department's conclusion that appellant must be held "appropriately accountable for this horrific offense." Appellant represented "a substantial threat to public safety" with "significant rehabilitative treatment needs," concerns, as Waggener put it, that could not be addressed by any local programs or facilities.

Elaborating, Waggener testified that he had considered various less restrictive options. However, most of the available placements were not secure, and thus appellant could simply walk away from them. And none of the nonsecure placements had gang intervention programs.[7] In sum, Waggener did not "automatically" consider this a DJJ case, he "didn't see any other alternatives."

The juvenile court also heard from Parole Agent Lorraine Custino, who testified about DJJ. It is, she said, a secure program designed to serve youth who have committed "some of the most serious and violent felonies that a person can be adjudicated on." Appellant's age—13 at the time of the murder, almost 15 in May, 2018—became a subject of some testimony. Custino testified that DJJ had 618 youths at the time, 45 of whom were 16 years or younger, with the youngest at the time being 14. But, she said, DJJ could accept youths as young as 12.

As to how DJJ operated, a youth accepted there is assigned a counselor and casework specialist as part of the intake process. If, like appellant, the youth is 16 years or younger, then he or she is assigned to the "O.H. Close" facility. The youth is then evaluated for his or her risk of reoffending, and then assigned to an appropriate housing unit. The youth is also placed in specific programs based upon the youth's needs, all of which programs are "evidence-based," which means they have been shown to be "much

[7] Waggener noted that Youth Offender Treatment Program in juvenile hall was secure, but appellant was not old enough for the program, and there was a possibility that he could be released after as little as nine months even were he admitted.

more successful" with youth populations than non-evidence-based programs. And if a youth has a significant risk of violence or aggression, he is placed in "Aggression Interruption Training," a 10-week course to help them slow their thinking and to encourage consideration of the consequences of their actions. If a youth has a substance abuse problem, DJJ offers a Substance Abuse Cognitive-Behavioral Therapy group consisting of 38 sessions involving skills building and examining the underlying issues of the youth's drug use. And if a youth is involved with gangs, like appellant, at the time the DJJ used the "Counterpoint" program which focused on skill building and developing social skills.[8] DJJ also offered three levels of mental health services, ranging from outpatients who get counseling as needed to intensive treatment for youth with psychosis or violence without medication. Finally, DJJ also "is a school district," with an accredited high school.

At the dispositional hearing, defense counsel represented that she had retained an expert to evaluate appellant and make "his own recommendations as to what he thought would be the best . . . disposition options" for appellant. However, after meeting with that expert once, appellant refused to meet with him again. And so defense presented no testimony at the contested dispositional hearing.

Appellant's argument, which is set forth at length for some 15 pages, acknowledges much of the evidence described above, including that about DJJ. It also acknowledges much of the evidence about appellant's background and behavior, although there is some effort to downplay some of the evidence about appellant's background including: his prior criminal history; his marijuana usage (which the brief asserts keeps him "focused"); and his gun (which his brief asserts are "just around.")

Against that background, appellant contends there is no substantial evidence that the juvenile court considered alternative placements and, in his words, there is a "total

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[8] Custino testified, that "within the next few months" DJJ planned to begin a new program called "Phoenix New Freedom-100," a 100-session group recommended by the Department of Justice.

lack of evidence that he will benefit" from a commitment to DJJ. We disagree on both counts.

As described in detail above, the juvenile court heard abundant evidence about alternative placements, and concluded there were no suitable less restrictive alternative placements to meet appellant's needs and at the same time address the danger he posed to public safety. In making this determination, the juvenile court was not obliged to follow any particular order in its placement, i.e., from least to most restrictive, and a court does not necessarily abuse its discretion by committing a minor to DJJ before other options have been tried. (*John L. v. Superior Court* (2004) 33 Cal.4th 158, 184–185, fn. 10, citing *In re Eddie M.* (2003) 31 Cal.4th 480, 507, fn. 16.)

Appellant's planned, and brutal, attack showed that he was a potential danger to public safety and could not be adequately monitored in an unsecured placement. Moreover, as Waggener testified, any less restrictive placements was inadequate, whether due to their nonsecure nature, the brevity of their confinements, or their lack of programs responsive to appellant's needs. Indeed, the juvenile court noted it was "very familiar with all other resources," and concluded that they were "not appropriate" and that other California programs were unable to "provide the long-term needs of this minor to stop the criminal behavior lifestyle of his."

As to appellant's second item, DJJ benefit to appellant, there was substantial evidence to support the juvenile court's finding that appellant would probably benefit from the structure and treatment services at DJJ. (*In re Jonathan T.* (2008) 166 Cal.App.4th 474, 486 ["The [juvenile] court is only required to find if it is probable a minor will benefit from being committed, and the court did so in this case"].)

There was substantial evidence that appellant would benefit from the supervised setting of DJJ, which would help hold him accountable for his particularly egregious crime, and would prevent him from committing any similar offenses. And there was substantial evidence that DJJ could provide resources for appellant to deal with his substance abuse, gang membership, and violent behavior. Appellant argues that DJJ had an "uncertain" gang program, that there is no evidence "regarding the quality" of DJJ's

educational programs, and that there "is no evidence concerning the[] efficacy." Of DJJ's substance abuse programs. But the juvenile court was required to find that appellant will *probably* benefit from a DJJ commitment, not that he *necessarily* will. (*Jonathan T., supra,* 166 Cal.App.4th at p. 486 ["There is no requirement that the court find exactly how a minor will benefit from being committed to DJJ"].)

In sum, appellant had significant need not only for a secure setting, but also for the programs available at DJJ. As Custino put it, "Everyone we have will be returning to the community. We want to make sure they leave better than they came." In short, as the juvenile court summed up: "I've been at DJJ. They do have incredible resources for those 14 and older."

Remand is Necessary

Appellant's third argument is that he is entitled to custody credits for the entire period he spent in custody before being transferred to DJJ. The attorney general agrees, and says that remand may be necessary because, as appellant notes, "the actual date of [appellant]'s commitment to DJJ is unclear." In other words, the Attorney General asserts that remand is also appropriate because it is unclear whether the juvenile court intended its 10-year commitment to DJJ to be reduced by the time appellant had already spent in custody.

Finally, appellant contends that five conditions of probation listed on the clerk's minutes should be stricken, because the juvenile court "did not impose them." The basis of the argument is that, after committing appellant to DJJ, the court stated "all probation terms are done by DJJ now. They're not asking us to submit any other probations terms. So the only thing I do is make a commitment to the [DJJ.]" This, of course, was correct. (*In re Edward C.* (2104) 223 Cal.App.4th 813, 829-830.)

Despite that, the minutes of the disposition order specify that the juvenile court adopted the recommendations of the probation officer "as modified [and] stated on the record." And the attached "Recommendations to the Juvenile Court of Contra Costa County" lists five conditions—nos. 11, 12, 20, 21, and 22—not adopted by the juvenile court on the record. As the attorney general concedes, that language should be removed.

(See *People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2 [oral pronouncement takes precedence over minute order].)

DISPOSITION

The matter is remanded with directions to the juvenile court to clarify its dispositional order or recalculate and apply appellant's predisposition custody credits and to amend the minutes to strike any unimposed probation conditions. In all other aspects the judgment is affirmed.

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Richman, J.

We concur:

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Kline, P. J.

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Miller, J.

People v. Jamaul M. (A154577)